

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Acting Chairman;
Tony Hammond, Vice Chairman;
Mark Acton;
Ruth Y. Goldway; and
Nanci E. Langley

Periodic Reporting
(Proposal Thirteen)

Docket No. RM2015-7

ORDER GRANTING UNITED PARCEL SERVICE, INC.
MOTION FOR ISSUANCE OF COMMISSION INFORMATION REQUEST NO. 1
AND REVISING PROCEDURAL SCHEDULE

(Issued April 23, 2015)

I. INTRODUCTION

United Parcel Service, Inc. (UPS) requests the Commission to issue an information request to the Postal Service for a “Crosswalk File” that unmask all ZIP Codes in the Postal Service's nationwide Form 3999 data set.¹ UPS also seeks access to the Crosswalk File for its outside counsel and consultants, subject to the same protective conditions that applied to their earlier access to non-public material. *Id.* at 5. The Commission, having reviewed the supplemental information provided by UPS and an extensive set of pleadings, grants the UPS Motion for the reasons discussed below.

¹ See Motion of United Parcel Service, Inc. for Issuance of Information Request Relevant to Proposal Thirteen, March 18, 2015 (UPS Motion).

II. BACKGROUND

Proposal Thirteen, as filed by the Postal Service, concerns revisions to the longstanding city carrier street time cost model.² To support the proposed revisions, the Postal Service conducted a special field study to obtain collection, parcel, and accountable volume data from a sample of 300 ZIP Codes drawn from a data set that covers more than 140,000 carrier routes (the Form 3999 data set).³ The Postal Service masked the identity of the 300 ZIP Codes in public documents by assigning them different ZIP Codes.

Prior to submitting comments on Proposal Thirteen, UPS filed — and the Commission granted — an unopposed motion for access, under protective conditions, to a non-public Crosswalk File linking the 300 masked ZIP Codes to the actual ZIP Codes.⁴ One of UPS's purposes for seeking access was to permit its consultants and outside counsel to analyze and assess how the study data had been used in the Postal Service's cost model. See UPS Motion for Access at 1.

UPS subsequently filed comments addressing the Postal Service's model in which it incorporated a proposal for consideration of a cost model developed by its consultants.⁵ UPS's model takes a different approach than the Postal Service's model by relying upon geographical differences among carrier routes. UPS Motion at 2. In light of this difference, UPS concurrently sought access to the full Form 3999 data set in the form of a crosswalk file that would show how to unmask the masked ZIP Codes in

² See Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Change in Analytical Principles (Proposal Thirteen), December 11, 2014 (Petition).

³ Report on the City Carrier Street Time Study, December 2014, at 5 (Report on Street Time Study). The Report on Street Time Study is included in Library Reference USPS-RM2015-7/1. A copy was also attached to the Petition.

⁴ See United Parcel Service, Inc.'s Motion Requesting Access to Non-Public Materials Relevant to Proposal Thirteen Under Protective Conditions, February 18, 2015 (UPS Motion for Access); Order No. 2363, Order Granting Motion for Access to Non-Public Material, February 24, 2015.

⁵ United Parcel Service Comments on Postal Service Proposal Thirteen Regarding City Carrier Street Time Costs, March 18, 2015 (UPS Comments). Exhibit A of the UPS Comments consists of the Report of Kevin Neels on Behalf of United Parcel Service (Neels' Initial Report).

the Form 3999 data base for purposes associated with its alternative model.⁶ UPS estimates that it could complete its analysis of the broader data set and prepare a supplemental report as early as June 5, 2015.⁷ The Postal Service opposes UPS's request for access to the full Form 3999 data set.⁸

III. INITIAL SET OF PLEADINGS

A. The UPS Request

UPS seeks access to the full Form 3999 data set in order:

- to "stress test" its alternate model on a larger data set, which may yield improvements in the model and to allow the Commission and others to more fully consider the reliability and accuracy of the alternate model;
- to enable its consultant to examine the relationship between volume and cost for the entire city carrier street system; and
- to help show how the Postal Service's own data, collected in the ordinary course of business, could reduce or even replace the Postal Service's heavy reliance on costly special field studies.

UPS Motion at 1-4. UPS argues that balanced against the interest in evaluating an alternate model to Proposal Thirteen and in "developing superior approaches to city carrier costing" outweigh the Postal Service's interest in not providing the Crosswalk File to the Commission. *Id.* at 4. It observes that "this is particularly true because the Postal Service can submit the file on a non-public basis and thereby ensure it is not used for any commercial purpose." *Id.*

⁶ See generally *id.*

⁷ See United Parcel Service's Supplemental Information in Response to Order No. 2433, April 14, 2015, at 3.

⁸ See Answer of the United States Postal Service in Opposition to UPS Motion Requesting Issuance of an Information Request, March 30, 2015 (Postal Service Answer). Although dated March 23, 2015, the Postal Service Answer was actually filed on March 30, 2015. See Order No. 2412, Order Granting Extension of Time to File Answers to Pending Motion for Information Request, March 25, 2015.

UPS also asserts that granting access would be consistent with several other considerations associated with the Postal Accountability and Enhancement Act (PAEA), such as:

- the Commission's responsibility under 39 U.S.C. § 3633 to ensure that each competitive product covers its attributable costs;
- the Commission's need to rely on active participation by interested parties, such as UPS; and
- the PAEA's reliance on public transparency to achieve the statutory goal of Postal Service accountability.

Id. at 4-5.

Finally, UPS asserts that the standards of Federal Rule of Civil Procedure, Rule 26(c) (FRCP Rule 26(c)) should guide the Commission in determining whether and how parties should be allowed access to sensitive Postal Service materials. UPS claims that the standards of FRCP Rule 26(c) "overwhelmingly" support granting its motion and permitting UPS's outside counsel and consultants to access the Crosswalk File. *Id.* at 5. It observes that "under FRCP Rule 26(c) it is well settled that even the most highly confidential information may be disclosed when appropriate protections are in place. In fact, such information is routinely exchanged in litigation under protective conditions, including those that limit access to the party's outside counsel and consultants." *Id.*

B. The Postal Service's Response

The Postal Service observes that the information UPS seeks would allow the data for each individual carrier route in the nationwide Form 3999 data base to be matched to the actual ZIP Code in which that route operates, and opposes UPS's request for expanded access, even under protective conditions. Postal Service Answer at 1. It claims UPS's request is premised on the erroneous claim that the Postal Service has "no legitimate interest" in declining to grant access to the requested information. *Id.*

The Postal Service also explains that it "used the nationwide Form 3999 database only to derive *nationwide averages* for certain variables." *Id.* (emphasis in

original). It observes for that purpose the location of the ZIP Code in which any particular carrier route operates is irrelevant as all routes in the country are included to calculate the average. *Id.* at 1-2. It says that “the Form 3999 database publicly presented by the Postal Service on December 11, 2014, ... had no reason to include information that would tie the wealth of information presented for each carrier route back to a specific ZIP Code. For each observation (*i.e.*, each carrier route), values for each variable could be matched with values for the other variables recorded for that observation, but reviewing parties had no reason to (and thus were not provided data to enable them to) trace the location of the route (and all of the associated values for the component variables) back to any particular region, state, or city, much less back to a specific ZIP Code.” *Id.* at 2.

The Postal Service's concern about UPS's request is that "... anyone with access to this information would be able to examine carrier operation for each route in each ZIP Code (with city delivery) in the entire country." *Id.* It notes that this includes details about “how operations are conducted (as reflected in the times spent on various activities), and how postal customers are using the delivery network (as reflected in the volumes delivered in various categories).” *Id.* It asserts that the "extreme commercial sensitivity of these data is self-evident," and that “any rational commercial enterprise would resist attempts to allow outside interests to gain access to such detailed and comprehensive data.” *Id.* It dismisses “any claim that [it] has ‘no legitimate interest’ in protecting such data as bordering on frivolous.” *Id.*

The Postal Service also asserts that there are many grounds to conclude that UPS has not satisfied the fundamental question of why it has a need for the data. *Id.* at 3. In support of this contention, it cites, among other things, the absence of a provision in the existing procedural schedule for consideration of further UPS research; uncertainty over whether UPS intends to simply improve the competing model or expand it; and UPS's acknowledgement that even with access to the full Form 3999 data set, certain data (for Collection and Accountables volumes) will not be available. *Id.* at 4-5.

IV. ADDITIONAL PLEADINGS

Further UPS arguments. In response to the Postal Service Answer, UPS reiterates that the Postal Service's opposition to access is inconsistent with the objectives of transparent and accurate cost attribution that should govern these proceedings.⁹ With respect to the Postal Service's argument that any rational commercial enterprise would resist attempts to allow outside interests to gain access to the requested file, UPS contends that the Postal Service "acknowledges that UPS seeks access ... under protective conditions that expressly prevent it from being used for *any* commercial purpose at all." UPS Reply at 3 (emphasis in original). Moreover, it claims the Postal Service is not "any ordinary commercial enterprise," but an enterprise "subject to rigorous statutory requirements regarding its costing practices." *Id.* at 3-4.

UPS also asserts that the Postal Service's argument that the request should be denied because the procedural schedule does not provide for UPS to submit further research or to present arguments drawn from the results of research is a red herring. *Id.* at 4. It states there is no provision for additional procedural stages because the Commission had no way of knowing that UPS would submit an alternate model and request additional data. *Id.* It states that "the Commission is free ... to adopt the procedural schedule most suitable to getting to the right result." *Id.*

UPS states that "the goal of this docket is to improve and update the model for city carrier street time cost attribution." It contends that "the size of this cost segment, the infrequency with which updates to city carrier costing models have taken place, and the long periods of time over which mailers, the Postal Service, the Commission, and other stakeholders have had to live with out-of-date costing procedures, make it clear

⁹ United Parcel Service Reply to United States Postal Service Opposition to UPS Motion Requesting Issuance of an Information Request Related to Proposal Thirteen, April 2, 2015, at 1 (UPS Reply). See also Motion of United Parcel Service, Inc., for Leave to File Reply to United States Postal Service Opposition to UPS Motion Requesting Issuance of an Information Request Related to Proposal Thirteen, April 2, 2015 (UPS Motion for Leave to File Reply). The UPS Motion for Leave to File Reply is granted.

that city carrier costing should be examined closely now, while interested parties are engaged and alternative proposals have been presented.” *Id.*

UPS claims that the Postal Service "attacks a straw man" in saying that UPS purports to establish a "need" for the data by portraying the additional data as necessary to *expand* the scope of the alternate model, but it has yet to come forward with an unexpanded version. *Id.* at 6. UPS reiterates that file would help “stress test” its preliminary model; help UPS’s consultants improve the accuracy of cost attribution to individual products flowing from the model; and would point toward better costing approaches going forward. *Id.* Moreover, it claims that the interest in running a national analysis presents a clear reason to use the full Form 3999 data set. *Id.* at 7.

UPS asserts that the Postal Service's claim that UPS still would not have a full set of data capable of being plugged into the model is disingenuous because an explanation has already been provided that its consultant “has a plan for reliably imputing those volumes to the national Form 3999 data.” *Id.* at 8.

Further Postal Service arguments. The Postal Service responds by asserting that it would be useful for the Commission and UPS to be aware of a bullet point in the Neels' Initial Report concerning the calculation of route density metric.¹⁰ That bullet point addresses how Dr. Neels will use the Crosswalk File to map the Form 3999 data to actual ZIP Codes and states that this effort is time intensive because it involves a massive data set.

The Postal Service asserts that “the actual relationship between the two measures of delivery point density for the subset of [300] ZIP Codes already identified can be examined to explore the claim that the UPS measure vastly diminishes the possibility of bias,” and provides what it asserts are the relevant statistics. Postal Service Comments at 1-2. It claims that “the similarity in the variation in the two measures ... suggests that, even after the substantial time and effort UPS indicates

¹⁰ See *generally* Comment of the United States Postal Service in regard to Supplemental Information Provided by UPS, April 15, 2015 (Postal Service Comments).

would be required, the UPS approach would not materially affect the estimation results in this regard.” *Id.* at 2.

Additional UPS filing. UPS asserts that “the Postal Service's summary analysis of the limited set of ZIP Codes ... does not demonstrate what would happen if UPS's alternative approach to measuring route density were run on all ZIP Codes.”¹¹ It asserts that the Postal Service's comment, at best, is premature and that the Postal Service will have a chance to comment on the strength of the street-mile variable versus the land-area variable after its consulting team present the results of their analysis using the full set of ZIP Codes. UPS Reply Comments at 1-2. It asserts that the only way for Dr. Neels to present that analysis is through access to the requested Crosswalk File. *Id.* at 2.

Moreover, UPS asserts that the Postal Service has not provided any reason to doubt that its alternative approach, conceptually, is a superior measure of route density with less chance of introducing bias. *Id.* It claims that “the purpose of a route density metric is to control the differences introduced between sparse and dense ZIP Codes.” “If a ZIP Code consists of mostly unoccupied land but with a geographically small but dense road system, the Postal Service’s metric would indicate the area traversed by city carrier routes is more sparse than it actually is.” *Id.* It contends that “the more ZIP Codes that are analyzed, the more likely it is that such bias would arise from the Postal Service’s metric.” *Id.* UPS claims that its “metric, on the other hand, would be more accurate in such cases, as the large swaths of unoccupied land would likely have few roads.” *Id.* Thus, UPS asserts that its “metric does a superior job of encompassing all of the varied conditions likely to arise within the full nationwide set of city carrier routes.” *Id.*

UPS also asserts that the Postal Service’s comment addresses only one of the uses to which Dr. Neels and his team would put the Crosswalk File, and claims there is “every reason to believe that a nationwide analysis would be superior to the limited

¹¹ United Parcel Service's Reply to Comment of the United States Postal Service in regard to Supplemental Information Provided by UPS, April 16, 2015, at 1 (UPS Reply Comments).

analyses of just 292 ZIP Codes the Postal Service presents in Proposal Thirteen.” *Id.* at 2.

V. COMMISSION ANALYSIS

UPS seeks to expand the scope of this proceeding to include consideration of an alternative to the longstanding city carrier cost model used by the Postal Service. Proposal Thirteen would update that longstanding cost model. The UPS alternative cost model is based upon a fundamentally different approach that uses geographical information about routes. Consideration of the UPS alternative cost model has implications for access to the requested Crosswalk File data (which both UPS and the Postal Service agree is commercially sensitive) and for future Commission proceedings (as improved costing for inclusion in the next ACR is one objective of this docket).

Given the posture of this case, Commission rule 3050.11(b)(2) allows UPS to request access to data "otherwise unavailable" from the Postal Service to support the "assertions or conclusions" associated with its model. If the Postal Service asserts a claim of privilege to the requested data, the standard of review for determining whether access should be granted is based upon the balancing test of FRCP Rule 26(c). 39 C.F.R. § 3007.52.

Considerations pertaining to the issuance of an information request. The Postal Service maintains that UPS has not made its case because there is no provision in the original procedural schedule for evaluation of an alternative; because UPS has not yet presented the model for which it claims to need the Form 3999 data; and because the Collection and Accountables volumes required by the model are not included in the Form 3999 data being sought by UPS. Postal Service Answer at 3-5.

While the Postal Service is correct that the original schedule does not contemplate review of the UPS model, adjustments to that schedule can be made if warranted. However, clarity as to which model UPS is proposing for consideration is essential. The Commission agrees with the Postal Service that there has been some uncertainty on this point, however, it concludes that UPS has explained the scope of the

model it is proposing, as well as how it anticipates addressing the lack of certain volume data. Moreover, UPS convincingly argues that the more limited set of 300 ZIP Codes, while adequate for evaluating the Postal Service's proposal, does not suffice for the key purpose of testing its competing model.

The Commission has considered whether narrowing the request by providing access to a subset of data (larger than the original set, but smaller than the full set) would meet the needs of this case. Based on available information, the Commission concludes that a subset of the requested data would not satisfy the objectives of testing the UPS model and, if appropriate, yielding potential improvements. The Commission also finds that access to the full data set is likely to promote transparency and the coverage of competitive products' attributable costs.

The Commission agrees with the Postal Service that expanded access could unduly delay this proceeding. However, UPS has suggested that consideration of its cost model can be completed within a period that allows for issuance of a Commission decision (based on either model) in time for incorporation into the FY 2015 Annual Compliance Review. Barring unforeseen developments, the Commission concludes that UPS's request appears reasonable at this time. Should events prove otherwise, the Commission can take action to ensure that the objective of issuing a decision in time for preparation of the FY 2015 ACR is met.

The Postal Service also suggests that in determining whether access should be granted, the Commission be aware of the similarity in the variation of the Postal Service's and UPS's alternative measures of delivery point density. See Postal Service Comments at 1-2. Because of this similarity, the Postal Service asserts that the UPS approach would not materially affect the estimation results. *Id.* The Commission concludes that the proffered analysis goes to the weight of UPS's arguments in favor of its model, and not to the fundamental question of access.

Considerations pertaining to the grant of access to non-public material. At the outset, the Commission agrees with the Postal Service's assertion that it has a legitimate interest in protecting confidential commercial data. In resolving this issue, the

Commission first examines whether UPS has established that it has a legitimate need for such access.

Finally, the Commission considers the question of whether adequate safeguards exist to protect the Postal Service's legitimate interests in protecting commercially sensitive data. In this situation, UPS represents that it will adhere to the same standards that governed its earlier access request. The Postal Service has not offered any reason to conclude that its interest in protecting commercially sensitive information cannot be protected by granting UPS's outside counsel and consultants access to the requested information subject to the same protective conditions that have previously been imposed in this proceeding. The Commission concludes that granting UPS access to the full Form 3999 data base to the same persons and on the same terms as established in Order No. 2363 is appropriate.¹²

Revised procedural schedule. In Order No. 2433, the Commission suspended the April 15, 2015 deadline for filing reply comments addressing initial comments on the Postal Service's cost model pending resolution of the instant Motion.¹³ The new date for filing such reply comments is May 13, 2015.

In addition, UPS is directed to file its supplemental report by June 8, 2015. Initial and reply comments on UPS's supplemental report shall be filed by July 8, 2015, and July 15, 2015, respectively.

VI. ORDERING PARAGRAPHS

It is ordered:

1. The Motion of United Parcel Service, Inc. for Issuance of Information Request Relevant to Proposal Thirteen, filed March 18, 2015, is granted.

¹² The Commission deems the executed certificates previously filed by UPS's consultants and outside counsel adequate to govern access to the data that is to be filed by the Postal Service in response to the Commission's Information Request No. 1.

¹³ Order Directing United Parcel Service, Inc. to File Supplemental Information and Suspending Reply Comment Deadline, April 9, 2015, at 2 (Order No. 2433).

2. The Postal Service shall, not later than April 24, 2015, file with the Commission the data requested by UPS as described in the main body of this Order.
3. The UPS outside counsel and consultants previously approved for access to non-public Postal Service data in this docket are authorized to have access to the non-public information filed in response to this Order.
4. Reply comments addressing the previously filed initial comments on Proposal Thirteen shall be filed not later than May 13, 2015.
5. UPS is to file a supplemental report by June 8, 2015.
6. Initial and reply comments on the UPS's supplemental report shall be filed by July 8, 2015, and July 15, 2015, respectively.

By the Commission.

Shoshana M. Grove
Secretary